IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 295 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMRUTLAL RAVJIBHAI KACCHADIA - Applicant(s)
Versus
SMT. CHANDANBEN LALITKUMAR GARDI - Opponent(s)

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Appearance :
MR CHETAN P PANDYA for Applicant(s) : 1,MR PRANAV M RAVAL for Applicant(s) : 1,
MR HARSHIT S TOLIA for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 25/04/2007

ORAL JUDGMENT

The petitioner-original defendant- appellant (tenant) is before this Court being aggrieved by the judgement and order passed in Regular Civil Appeal

No.79 of 2004 by the learned Presiding Officer, Fast Track Court No.7, Junagadh dated 10.01.2006, whereby the appeal was dismissed and the judgement and order passed in Regular Civil Suit No.411 of 1997 by the learned Civil Judge (SD), Junagadh was confirmed.

Few facts are necessary to appreciate the conduct of the present petitioner-tenant. The suit was decreed on 25.08.2004 against which an appeal was filed being Regular Civil Appeal No.79 of 2004 which was allowed and the learned District Judge was pleased to remand the matter to the trial court. This order was challenged before this Court by filing Special Civil Application No.82 of 2005, which was allowed by order dated 27.06.2005, 'order of remand' was quashed and set aside by this Court, and the learned District Judge was directed to decide the appeal on merits.

After the direction from this Court the Civil Appeal was decided on merits by order dated 10.01.2006. There are concurrent findings recorded against the present petitioner-tenant.

2. The landlord-original plaintiff filed Execution Application No.83 of 2006, wherein order was passed on 22.09.2006 and **decree was executed on 03.10.2006.** (emphasis supplied)

The plaintiff-landlord filed Caveat Application before this Court on 10.02.2006. Though the Civil Revision Application was affirmed on 04.09.2006 it was filed in this Court on 20.09.2006. But the same was not taken up for hearing. Later on, an application being Civil Application No.11428 of 2006 seeking condonation of delay was moved. After the delay is condoned the present Civil Revision Application was placed for hearing on 15.12.2006, but the same was not heard. After being listed for more than half a dozen times, it has come up for hearing today.

3. Mr.Pandya, learned advocate submitted that it is the case of the petitioner-defendant that the learned Judge has erred in recording a finding that,

> ".. Considering the oral as well as

documentary evidence on record it transpires that rent is payable by month. .. “

The learned advocate for petitioner relied upon the averments made in para 2 of the plaint, wherein it is stated that the monthly rent of the premises was Rs.75/-, besides that any tax or other levies on the premises were to be borne by the defendant-tenant. He submitted that, that being so the rent could not have been said to be payable by month.

Besides learned advocate for petitioner submitted that the dispute about standard rent was raised in response to the notice served by the landlord under section 12(2) of the Bombay Rent Act.

4. He submitted that, that being so, the learned Judge has erred in passing a decree against the tenant and the first appellate court has also committed error in confirming the same.

5. In reply to this, Mr.Tolia, learned advocate for respondent- landlord relied upon a decision of the

Hon'ble the Apex Court in the matter reported in 1991 (O) GLH EL 22877. He also relied upon a decision of this Court in the matter of **Popatlal M. Bhansali Vs. Rughnath Bhavani Suthar**, reported in 2006(1) GLH 60.

6. Taking into consideration the rival submissions of the parties, this Court is of the opinion that no case is made out for interference at the hands of this Court. Hence the Civil Revision Application fails and the same is dismissed.

(RAVI R. TRIPATHI, J.)

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